ARKANSAS SUPREME COURT

No. CR 07-742

	Opinion Delivered **January 10, 2008**
GARY LASHAWN HAYWOOD Appellant	PRO SE APPEAL FROM THE CIRCUIT COURT OF GARLAND COUNTY, CR 2001-5, HON. MARCIA HERNSBERGER, JUDGE
v.	
STATE OF ARKANSAS Appellee	APPEAL TREATED AS PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS AND DENIED.

PER CURIAM

In 2001, appellant Gary LaShawn Haywood entered a plea of guilty to attempted first-degree murder and first-degree murder. He was sentenced by a jury to an aggregate term of life imprisonment without parole and fined $15,000 on the charge of attempted first-degree murder. While there is no appeal from a plea of guilty, a convicted defendant can appeal sentencing by a jury. Appellant did so and we affirmed.[1] *Haywood v. State*, CR 02-120 (Ark. Oct. 24, 2002) (per curiam). In 2007, appellant filed in the trial court a pro se petition for writ of error coram nobis. The trial court denied the petition and appellant has lodged an appeal here from that order.

We first note that appellant failed to conform to the prevailing rules of procedure in that he did not seek leave from this court before filing the petition for writ of error coram nobis in the trial

[1]Trial counsel filed an appeal brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Arkansas Supreme Court Rule 4-3(j)(1), wherein counsel maintained that the appeal had no merit and addressed all rulings adverse to appellant. Appellant additionally filed points for reversal pursuant to Ark. Sup. Ct. R. 4-3(j)(2) that contained allegations of ineffective assistance of counsel, mental illness and illegal sentencing.

court. The petition for leave to proceed in the trial court is necessary because the trial court can entertain a petition for writ of error coram nobis after a judgment has been affirmed on appeal only after we grant permission.[2] *Dansby v. State,* 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam). Nevertheless, in the interest of judicial economy, rather than compel appellant to refile his petition here, we treat this appeal as a petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

After a review of the petition filed in the trial court, we find no ground to warrant issuance of a writ of error coram nobis. Appellant alleged entitlement to an error coram nobis writ based upon: (1) violation of his due process rights under the Fourteenth Amendment for failure of the trial court to allow a mental examination of appellant; (2) insanity at the time of the trial; (3) denial of the presumption of innocence due to mental disease or defect; (4) ineffective assistance of counsel. Appellant expressed his fifth and final argument as "[t]he affirmatively [sic] of insanity or incompetence whether the State should take charge of him, and rather the courts was satisfied with Petitioner's psychiatric problem." A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *State v. Larimore*, 341 Ark. 397, 17 S.W.3d 87 (2000). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam).

A writ of error coram nobis may be available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor or a third-party confession to the crime during the time between conviction and

[2]Ordinarily, where a judgment of conviction was entered on a plea of guilty or nolo contendere, a petition for writ of error coram nobis is filed directly in the trial court. *Dansby, supra*. Here, however, appellant appealed from the jury sentence as noted above.

appeal. *Pitts, supra*. For the writ to issue following the affirmance, appellant must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). A writ of error coram nobis is appropriate only when an issue was not addressed, or could not have been addressed, at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005); *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997).

Appellant's first three arguments and last argument were predicated upon his being prevented from advancing a claim of mental disease or defect at the time of trial. He presented no evidence in support of his claim of mental illness other than the bare allegations. The record in appellant's direct appeal contained documents concerning appellant's desire to raise a defense of insanity, including letters written directly to the trial court by appellant. The record also reflected that a mental examination of appellant was conducted prior to trial and that trial counsel had possession of the examining psychologist's report. During the sentencing phase, the officer who took appellant's statement recalled that appellant disclosed to the officer that he had not been on his medication at the time he committed the crimes, and in his direct appeal, appellant attempted to raise a psychiatric-related claim. Issues raised by appellant in the petition for writ of error coram nobis related to his alleged mental disease or defect were, or could have been addressed, at trial. Appellant's potential claim of insanity was not hidden or unknown and did not involve a fundamental error of fact extrinsic to the record. *Larimore*, *supra*; *Echols*, *supra*.

In his fourth argument, appellant complained that the conduct of trial counsel rose to the level of ineffective assistance of counsel. The issue of counsel's effectiveness is one to be addressed pursuant to Ark. R. Crim. P. 37.1. Claims of ineffective assistance of counsel are outside the purview

of a coram nobis proceeding. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

In a petition for writ of error coram nobis, it is the petitioner's burden to show that the writ is warranted. *Cloird v. State,* 357 Ark. 446, 182 S.W.3d 477 (2004). Here, appellant has failed to make a showing that the allegations contained in his petition were meritorious or were grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis. As no substantive basis existed for granting the petition, we need not reach the issue of whether appellant exercised due diligence in proceeding for the writ. Thus, we deny appellant leave to proceed with a petition for writ of error coram nobis.

Appeal treated as petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis and denied.